

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael King T4	Team: Team # 4	CCRB Case #: 200711965	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/19/2007 5:00 AM	Location of Incident: the backyard of § 87(2)(b)	Precinct: 67	18 Mo. SOL 2/19/2009	EO SOL 2/19/2009	
Date/Time CV Reported Sun, 08/19/2007 3:21 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sun, 08/19/2007 3:21 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. CPT John Lewis	00000	894123	067 PCT
2. POM John Tancredi	00192	924537	067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gerald Migliaro	06753	918000	PBBS
2. DTS Albert Gut	00953	922465	ESS 07
3. POM Kevin Devine	08234	925191	067 PCT
4. SGT Denis Burke	00363	918793	067 PCT
5. SGT Michael Kraft	01453	924040	067 PCT
6. POM Mark Jablonski	25920	922540	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.CPT John Lewis	Abuse: Capt. John Lewis stopped § 87(2)(b)	
B.POM John Tancredi	Discourtesy: PO John Tancredi spoke obscenely and rudely to § 87(2)(b)	
C.POM John Tancredi	Abuse: PO John Tancredi entered § 87(2)(b) in Brooklyn.	
D.POM John Tancredi	Force: PO John Tancredi fired his gun at § 87(2)(b)'s dog.	

Synopsis

At approximately 5:00 AM on August 19, 2007, Captain John Lewis and PO John Tancredi of the 67th Precinct responded to 911 calls reporting shots fired in the vicinity of § 87(2)(b) in Brooklyn. While canvassing the area, the officers observed several individuals exit the backyard of § 87(2)(b) as well as several individuals sitting in a parked vehicle in front of § 87(2)(b). The officers stopped the § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) as identified by NYPD stop and frisk reports (allegation A). Because of the number of individuals at the location, Captain Lewis and PO Tancredi requested an additional unit to the scene and PO Kevin Devine and PO Mark Jablonski responded. § 87(2)(b) § 87(2)(b) exited her home (§ 87(2)(b) and spoke to the officers. § 87(2)(b) alleged that PO Tancredi spoke discourteously to her (allegation B). PO Tancredi entered the backyard to check to see if there were any victims or perpetrators in the backyard (allegation C). One of the § 87(2)(b) dogs lunged at PO Tancredi, who discharged one shot from his gun in self-defense before running out of the yard (allegation D). The dog was not injured. ESU was called to the location to conduct an evidence search. No arrests were made and no summonses were issued.

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) (*enclosure E1-E6*)

§ 87(2)(b) a 5'4" § 87(2)(b) African-American female, filed this complaint via telephone with the CCRB on August 20, 2007. She provided a detailed telephone statement to the CCRB on August 27, 2007 and was interviewed by the CCRB on September 18, 2007. § 87(2)(g)

At approximately 4:30 AM on August 19, 2007, § 87(2)(b) was asleep in her home (§ 87(2)(b) in Brooklyn) when she was awakened by 3-4 gunshots. § 87(2)(b) ran to her son's room, but he was not home. According to § 87(2)(b) her son, § 87(2)(b) had gone to a party that night and when she heard the gunshots, she went to his room to see if he made it home. She looked out a window and saw a car that § 87(2)(b) had been using parked in front of the house. § 87(2)(b) called out for § 87(2)(b) and he responded from the backyard. § 87(2)(b) went downstairs and looked out the front window. She observed an unmarked vehicle driving past the house. § 87(2)(b) entered the house and went upstairs. § 87(2)(b) then observed 5-6 of § 87(2)(b)'s friends walking to the front of the house, at which time two officers stopped three of the males and placed them against a fence. Another officer stopped the remaining friends of § 87(2)(b). She could not see if the officers frisked or searched the males. In her detailed telephone statement, § 87(2)(b) claimed that the males were frisked.

At that point, § 87(2)(b) went outside. One of the officers told § 87(2)(b) that the males had come from her backyard and asked if she knew the males. One of the males called out § 87(2)(b)'s first name and she realized that they were § 87(2)(b)'s friends, which she told the officers. She also told the officers that the group had gone to a party with § 87(2)(b) but that they were on their way home now. PO John Tancredi (identified by the investigation) told § 87(2)(b) that he needed to go into the backyard, but § 87(2)(b) refused to allow him. PO Tancredi responded, "I need to go in the fucking yard. Where's the fucking dog?" § 87(2)(b) explained to the CCRB that there was an empty dog leash in the front yard with no dog nearby. § 87(2)(b) objected to the officer's use of profanity and told him there was nobody in the backyard other than the dog. PO Tancredi responded, "If I have to shoot the fucking dog, I'm going to go in."

§ 87(2)(b) then left her house and walked down the block towards § 87(2)(b) to call her oldest son, § 87(2)(b). § 87(2)(b) explained to the CCRB that she did not call from her house because she was worried that the officers would accuse her of something. § 87(2)(b) told § 87(2)(b) he would be at her home soon. § 87(2)(b) did not wish to return to her home and so she walked around for a while and eventually returned to her house. She did not indicate how much time had passed.

When she returned home, § 87(2)(b) was informed by unidentified civilians that PO Tancredi had gone into her backyard and fired a single shot. (In her detailed telephone statement, § 87(2)(b) claimed that she heard the gunshot herself.) § 87(2)(b) spoke with a uniformed officer (identified by the investigation as Captain Lewis) and informed Captain Lewis of what had occurred earlier. She asked Captain Lewis to identify PO Tancredi, but Captain Lewis did not and instead identified himself. § 87(2)(b) asked Captain Lewis why there were officers in the neighbors' yards and Captain Lewis informed her that the officers had received a call for § 87(2)(b) and had gotten the address wrong. § 87(2)(b) believed that § 87(2)(b)'s friends who had initially been stopped were subsequently transported to the stationhouse and questioned about a shooting on § 87(2)(b).

Results of Investigation

§ 87(2)(b) (enclosure F1)

The CCRB obtained a detailed telephone statement from § 87(2)(b) on August 27, 2007. § 87(2)(b) appeared at the CCRB on September 18, 2007 with his mother, though he left the agency before providing a statement that day. When contacted by phone, § 87(2)(b) claimed that he had to leave to go to the hospital and requested to reschedule the interview. The CCRB made additional attempts to contact § 87(2)(b) via telephone and correspondence, though § 87(2)(b) never contacted the CCRB and did not provide a formal statement.

According to his telephone statement, § 87(2)(b) denied being in the backyard at the time of the initial gunshots; he claimed that he was inside his mother's house. § 87(2)(b) provided no additional information regarding the individuals stopped. § 87(2)(b) told the officers not to enter her backyard and warned them that there was a dog in the backyard. One of the officers stated, "I don't care about the fucking dog" and then entered the backyard. Within a few seconds, § 87(2)(b) heard a single gunshot. Numerous other officers then responded to the location. The officer who entered the backyard had his gun removed from him and other officers pulled him out of the yard. Officers remained at the house for several hours, photographing the yard and removing the shell casing.

§ 87(2)(b) (enclosure F2)

§ 87(2)(b) was identified by the CCRB for this case when he was contacted by the CCRB in reference to CCRB case § 87(2)(b) (which § 87(2)(b) filed with the agency). The CCRB obtained a telephone statement from § 87(2)(b) on November 8, 2007. § 87(2)(b) did not cooperate with the investigation further and no formal statement was obtained from him. According to § 87(2)(b) he and his friends § 87(2)(b) "§ 87(2)(b) and a few others) were hanging out at § 87(2)(b)'s home. They heard gunshots coming from § 87(2)(b) and they all decided they should go home. § 87(2)(b) went inside with § 87(2)(b) while the others left. Captain Lewis (whom § 87(2)(b) knew from previous encounters) stopped and searched the group that had just left the § 87(2)(b) backyard. § 87(2)(b) initially did not recall where § 87(2)(b) was during the incident, but later stated that she was in the front yard speaking with the officers. § 87(2)(b) claimed that one of the officers told § 87(2)(b) to "stay in the fucking yard." § 87(2)(b) told the officers they could not enter the yard and one of the officers responded that he would do whatever the "fuck" he wanted. The officer entered the backyard and § 87(2)(b) immediately heard a single gunshot. The officer then returned from the backyard and Captain Lewis removed the officer's firearm. § 87(2)(b) provided no additional information.

Attempts to contact additional witnesses (enclosures M1-M9 and N1-N29)

The CCRB obtained copies of five UF-250 stop and frisk reports detailing the stops of the individuals at the start of this incident. The reports identified the following individuals: § 87(2)(b) and § 87(2)(b). Two letters were sent to the addresses listed for each individual on the stop and frisk reports, though none of the individuals responded to the letters. Only one of the letters § 87(2)(b) was returned to the CCRB as "undeliverable." A query of the CCRB complaint tracking system found no duplicate complaints filed by any of these individuals that could provide additional contact information except for § 87(2)(b) (CCRB case § 87(2)(b)). However, § 87(2)(b)'s address in § 87(2)(b) was the same address as listed in this case. As a result, no statements were obtained from the individuals identified by the stop and frisk reports.

PO John Tancredi (enclosure G1-G6)

PO Tancredi, a 5'9" 175-pound § 87(2)(b) old white male with brown hair, had the following memo book entries. At 4:50 AM, PO Tancredi responded to a report of shots fired (approximately 12 shots) in the vicinity of § 87(2)(b) and § 87(2)(b). At 5:00 AM, PO Tancredi arrived at the location and conducted a canvass. During the canvass, PO Tancredi spoke to approximately 6-8 persons who all stated that they heard numerous shots in the vicinity of § 87(2)(b). PO Tancredi observed three males seated inside a parked vehicle at the location with light and engine off. Passengers [illegible] and motionless. Six males stopped at this time. At 5:15 AM, PO Tancredi requested the Anti-Crime car to respond via Central. While conducting investigation, none of the six men stopped lived at location observed them coming from. During inspection of rear of location (§ 87(2)(b) was attacked by pit-bull dog and discharged one round at lunging animal in fear of [illegible] from service weapon. Location secured, ESU requested. Situation contained and pending arrival [of ESU]. At 6:45 AM, PO Tancredi was en route to § 87(2)(b). At 8:00 AM, PO Tancredi was assigned to the stationhouse administratively.

PO Tancredi was interviewed by the CCRB on March 12, 2008. On August 19, 2007, PO Tancredi was assigned to the 67th Precinct SPIKE Anti-Crime overtime detail and worked as Captain Lewis' operator. The officers were in plainclothes and using an unmarked RMP.

According to PO Tancredi, the officers responded to a 911 call regarding numerous shots being fired in the vicinity of § 87(2)(b) and § 87(2)(b). During a canvass, the officers spoke with several individuals who confirmed hearing shots fired. One individual in particular, an older male, claimed to have served in the Army and believed that the shots fired were from an automatic weapon. While driving northbound on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) PO Tancredi observed three males exiting the backyard of § 87(2)(b). The location is approximately 200 feet from the corner of § 87(2)(b) and § 87(2)(b). According to PO Tancredi, who had worked in the 67th Precinct for 9 years, § 87(2)(b) is a drug-prone location related to an individual named § 87(2)(b) a known drug-dealer.

PO Tancredi and Capt. Lewis approached the males on foot and asked them where they were coming from. One male said a friend's house. PO Tancredi asked who lived at that location and the male responded that none of them lived at that location. PO Tancredi asked where their friend was and one individual said he did not know while another said that the friend was not at that location at that time. PO Tancredi asked if the males had heard shots fired. Simultaneously one male said yes while another male said no. The inconsistency of these statements raised PO Tancredi's suspicion of these individuals. PO Tancredi asked whether the answer was yes or no and the third individual was looking around. PO Tancredi looked to see where the third individual was looking and saw a vehicle parked in front of § 87(2)(b). The engine and lights were off and the seats were tilted back. PO Tancredi could see that there were two males inside and later learned that there was a third as well. PO Tancredi then realized that there were 5-6 suspects and only he and Capt. Lewis on-scene. As a result, PO Tancredi then radioed and requested an additional SPIKE unit to the location.

At this point, PO Tancredi suspected these individuals based on their proximity to the call of shots fired, their presence at a location that he knew to be associated with criminal activity and also their inconsistent answers to questions asked on-scene. PO Mark Jablonski and PO Kevin Devine responded to PO Tancredi's request for a second unit, by which time PO Tancredi and Capt. Lewis had all six males stopped, three males with PO Tancredi just north of § 87(2)(b) and three males with Capt. Lewis by the parked car. With PO Jablonski and PO Devine on-scene, PO Tancredi felt he could then check the backyard of § 87(2)(b) to ensure that there were no additional suspects behind the house or an injured victim. PO Tancredi approached the front of the house and a female appeared § 87(2)(b) and asked what the officers were doing. PO Tancredi explained that there was a call of shots fired and that the males stopped were seen exiting the yard of the house. § 87(2)(b) identified the males as friends of her son. Given that the call of shots fired came from the vicinity of § 87(2)(b) and in light of the males' inconsistent answers to PO Tancredi's line of questioning, as well as PO Tancredi's prior knowledge that § 87(2)(b) was a location from which drugs were sold and guns had been recovered and in addition to the fact that in PO Tancredi's experience, recreational gunfire often takes place on rooftops and in rear yards, PO Tancredi believed the call of shots fired to be a legitimate call and thought it was possible that the shots had been fired in the rear of § 87(2)(b) perhaps by the males who were seen exiting and possibly at a victim who remained in the yard. PO Tancredi told § 87(2)(b) that he needed to get into the back yard. PO Tancredi observed a pitbull laying in front of the house that appeared to be chained to the fence. This dog was large and did not seem to care that the officers were there. PO Tancredi asked § 87(2)(b)

§ 87(2)(b) to secure the dog so that he could check the backyard. § 87(2)(b) simply said, “No.” PO Tancredi did not know if § 87(2)(b) was refusing entry, refusing to chain the dog or telling PO Tancredi that he could not stop the individuals. § 87(2)(b) then walked off toward § 87(2)(b) saying that she was going to get her son. PO Tancredi stated that this conversation was quick and abrupt, but that it did not become argumentative. He denied using any profanity or threatening to “shoot the fucking dog.”

PO Tancredi asked PO Devine to watch the dog in front of the house while PO Tancredi went to check the backyard. PO Devine positioned himself such that he could see the dog in front of the house and could see down the driveway to the right of the house, where PO Tancredi went. PO Tancredi walked down the driveway to the right of the house. At the end of a driveway was a gate. There was no light in the back of the house so PO Tancredi used his flashlight and looked over the gate into the rear of the house. At the far left, PO Tancredi saw a doghouse that was angled such that he could not see inside. PO Tancredi whistled but did not see or hear any movement. PO Tancredi also said, “Police. Police.”

PO Tancredi opened the gate and entered the yard. He whistled again and did not hear or see anything. PO Tancredi had his gun out in his right hand and his flashlight in his left. PO Tancredi scanned the backyard with his flashlight and entered further into the yard. PO Tancredi proceeded to the left and as he got closer to the doghouse, he saw that there was a chain in the cutout. He continued to the left but heard the chain being dragged across the wood of the doghouse. PO Tancredi turned his flashlight back toward the doghouse and saw a pit-bull emerging from the house.

PO Tancredi back-peddled toward the gate and the dog pursued him. When PO Tancredi was 5-7 feet from the gate, the dog came within approximately 3 feet of PO Tancredi. The dog growled and began to lunge at PO Tancredi. PO Tancredi feared for his personal safety and believed that the dog was going to attack him. PO Tancredi fired one round at the dog and exited through the gate. PO Tancredi did not see where the round went. PO Tancredi informed Capt. Lewis that he had fired a round at a lunging dog in the backyard. Capt. Lewis took PO Tancredi’s gun and directed him to sit in an RMP. As the sun began to rise, PO Tancredi observed § 87(2)(b) return to the location with § 87(2)(b) whom he believed was § 87(2)(b) s son. PO Tancredi had no further interaction with the civilians.

Captain John Lewis (enclosure J1-J3)

Captain Lewis, a 6’2” 195-pound § 87(2)(b) old white male with brown hair, had no memo book entries regarding this incident.

Captain Lewis was interviewed at the CCRB on March 19, 2008. Captain Lewis’ statement was consistent with that of his partner, though he added the following divergent detail. Captain Lewis did not recall if he directed the officers to enter the backyard, but PO Tancredi and PO Devine entered the backyard together to look for a possible perpetrator or victim who may have been hiding or incapacitated behind the house. Captain Lewis believed this was a necessary action given the circumstances. Captain Lewis and PO Jablonski stood with the six males stopped in front of the location. Captain Lewis could not see the officers’ actions once they entered, but heard the gunshot. Captain Lewis wanted to go into the backyard but was holding three males. Approximately 30 seconds to 1 minute later, PO Tancredi and PO Devine exited the backyard and Capt. Lewis asked them what had happened. PO Tancredi explained that a dog had lunged at him and he discharged one round, but that he did not think he struck the dog.

An Emergency Services Unit and the Evidence Collection Team arrived on-scene and both they and Captain Lewis entered the backyard to search for evidence and to ensure that the bullet did not strike the rear of any of the houses behind § 87(2)(b). Captain Lewis did see a dog in the backyard, a skinny, perhaps malnourished pit-bull. He did not recall officers having to restrain the dog or the dog posing a threat to any of the officers. He did not recall if the dog was chained up.

Captain Lewis stated that he is very familiar with § 87(2)(b) from interactions in the confines of the precinct and stated that he saw § 87(2)(b) on-scene, after PO Tancredi fired the shot, but did not recall if § 87(2)(b) exited the house or approached from the street. Captain Lewis stated that he knows § 87(2)(b) resides at § 87(2)(b) but did not know if he was present during the incident.

Captain Lewis denied that any officers used profanity at any time.

PO Mark Jablonski (enclosure H1-H4)

PO Jablonski, a 6’ 170-pound § 87(2)(b) old white male with brown hair, had no memo book entries regarding this incident.

PO Jablonski was interviewed by the CCRB on March 12, 2008. On August 19, 2007, PO Jablonski was assigned to the 67th Precinct SPIKE Anti-Crime overtime detail with PO Kevin Devine. The

officers were in plainclothes and used an unmarked RMP. PO Jablonski's statement was consistent with the other officer statements and provided no additional details. PO Jablonski could not hear the conversation between PO Tancredi and § 87(2)(b). PO Jablonski did not hear PO Tancredi say anything to the effect of, "I need to get in the fucking yard," or "I'll shoot the fucking dog."

PO Kevin Devine (enclosure I1-I16)

PO Devine, a 5'11" 185-pound § 87(2)(b) old white male with brown hair, had no memo book entries regarding this incident.

PO Devine prepared the stop and frisk reports for this incident, all of which were identical. The stop and frisk reports indicated that the stops were made due to the individuals' proximity to a location of a crime and in response to 911 calls regarding shots fired. The individuals were suspected of criminal possession of a weapon.

PO Devine was interviewed by the CCRB on March 12, 2008. § 87(2)(g)

PO Devine did not enter the backyard with PO Tancredi. Instead, PO Devine stood at the corner of the house where he could monitor the dog in the front yard and watch PO Tancredi entering the backyard.

Firearms Discharge Report (enclosure K3-K11)

Captain Richard Gubitosi drafted the Firearms Discharge Report for this incident. He found that "PO Tancredi discharged his firearm one time at a pit bull that was aggressively charging at him." Captain Gubitosi found the firearm discharge to be in accordance with NYPD guidelines and found no violation.

NYPD Records (enclosure K1-K32)

SPRINT § 87(2)(b) indicated that at 4:50 AM, an anonymous female caller contacted 911 and reported that gunshots woke her up. The Automated number identification/Automated listing identification (ANI-ALI) indicated that the call originated from § 87(2)(b). At 4:51 AM, Sector G acknowledged the call. At 4:52 AM, Sector E acknowledged the call. Sector G arrived at the location at 4:53 AM. At that time as well, the 67th Precinct patrol supervisor acknowledged the call. At 4:58 AM, the job was unfounded. At 5:37 AM, the 67th Precinct Anti-Crime unit acknowledged the call and requested ESU to the location for evidence search at 5:38 AM. At 5:39 AM, ESU Truck 7 acknowledged the request. At 6:39 AM, ESU Truck 7 indicated that they were unable to recover evidence.

SPRINT § 87(2)(b) indicated that an anonymous female called contacted 911 at 4:51 AM to report hearing gunshots. The ANI-ALI identified § 87(2)(b) as the individual.

ESU Truck 7 prepared an ESU run sheet regarding the incident. Det. Albert Gut prepared the report. In the details section, Det. Gut stated: "crew requested to above location to conduct a search for ballistic evidence. Negative results, all evidence recovered by Precinct personnel."

Criminal Conviction Histories (enclosure L1-L2)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB Histories (enclosure C1-C7)

§ 87(2)(b) has been identified in five additional complaints with the CCRB. § 87(2)(b)

§ 87(2)(b) has one other CCRB complaint, § 87(2)(b)

This is the first and only CCRB complaint for § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b)

Officer CCRB Histories (enclosure B1-B3)

Captain Lewis has no substantiated CCRB allegations in his 20 years with the NYPD. § 87(4-b) § 87(2)(g)

PO Tancredi has no substantiated CCRB allegations in his 8 years with the NYPD.

Conclusions and Recommendations

Officer Identification

Captain Lewis was the ranking officer on the scene. § 87(2)(g)

§ 87(2)(g)

Undisputed Facts

Officers responded to a report of numerous shots fired in the vicinity of § 87(2)(b) in Brooklyn. Officers stopped § 87(2)(b) and § 87(2)(b) in the vicinity of § 87(2)(b) and subsequently released the males, some of whom had exited the backyard of § 87(2)(b). PO Tancredi entered the backyard and fired one shot from his gun at a dog, though the dog was not struck by the bullet. No arrests were made and no summonses were issued.

Disputed Issues

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A. Abuse of Authority – Capt. John Lewis stopped § 87(2)(b)

§ 87(2)(b) § 87(2)(b) and § 87(2)(b)

Barry Kamins' *New York State Search and Seizure* notes that in order to effect a level 2 stop (such as effected in this incident), officers must have an articulable basis to believe that criminality is afoot.

§ 87(2)(g)

Allegation B. Discourtesy – PO John Tancredi spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Allegation C. Abuse of Authority – PO John Tancredi entered the backyard of § 87(2)(b) in Brooklyn.

§ 87(2)(b)

Allegation D. Force – PO John Tancredi fired his gun at § 87(2)(b)'s dog.

Patrol Guide procedure 203-12 (enclosure A1) notes that “police officers shall not discharge their firearms at a dog or other animal except to protect themselves or another person from physical injury and there is no other reasonable means to eliminate the threat.” § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: